

Please type a plus sign (+) inside this box → ☐



HDP/SB/21 based on PTO/SB/21 (08-00)

AF  
RF

# TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Application Number	09/767,839
Filing Date	January 24, 2001
Inventor(s)	Philip D. MOONEY et al.
Group Art Unit	2618
Examiner Name	T. X. Nguyen
Attorney Docket Number	129250-001021/US

## ENCLOSURES (check all that apply)

<input type="checkbox"/> Fee Transmittal Form  <input type="checkbox"/> Fee Attached  <input type="checkbox"/> Amendment  <input type="checkbox"/> After Final  <input type="checkbox"/> Affidavits/declaration(s)  <input type="checkbox"/> Extension of Time Request  <input type="checkbox"/> Express Abandonment Request  <input type="checkbox"/> Information Disclosure Statement  <input type="checkbox"/> Certified Copy of Priority Document(s)  <input type="checkbox"/> Response to Missing Parts/ Incomplete Application  <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Assignment Papers (for an Application)  <input type="checkbox"/> Letter to the Official Draftsperson and _____ Sheets of Formal Drawing(s)  <input type="checkbox"/> Licensing-related Papers  <input type="checkbox"/> Petition  <input type="checkbox"/> Petition to Convert to a Provisional Application  <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address  <input type="checkbox"/> Terminal Disclaimer  <input type="checkbox"/> Request for Refund  <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance Communication to Group  <input type="checkbox"/> LETTER SUBMITTING APPEAL BRIEF AND APPEAL BRIEF (w/clean version of pending claims)  <input checked="" type="checkbox"/> Appeal Communication to Group (Notice of Appeal, <u>Brief</u> , (Corrected) Reply Brief)  <input type="checkbox"/> Proprietary Information  <input type="checkbox"/> Status Letter  <input type="checkbox"/> Other Enclosure(s) (please identify below):		
<table><tr><td>Remarks</td><td></td></tr></table>			Remarks	
Remarks				

## SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	CAPITOL PATENT & TRADEMARK LAW FIRM, PLLC	Attorney Name	John E. Curtin	Reg. No.	37,602
Signature					
Date	May 24, 2007				

--



**IN THE U.S. PATENT AND TRADEMARK OFFICE**

Application No.: 09/767,839  
Filing Date: January 24, 2001  
Applicant: Philip D. Mooney et al.  
Group Art Unit: 2618  
Examiner: T. X. Nguyen  
Title: SYSTEM AND METHOD FOR SWITCHING  
BETWEEN AUDIO SOURCES  
Attorney Docket: 129250-001021/US

---

**APPLICANTS/APPELLANTS' BRIEF ON APPEAL (CORRECTED)**

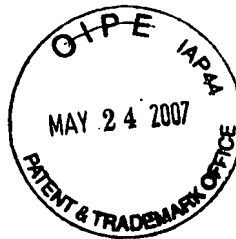
**MAIL STOP APPEAL BRIEF - PATENTS**

Customer Service Window  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

May 24, 2007

In response to the Notice mailed May 10, 2007 which requested that the Appellants identify those claims that have been cancelled in Section IV, the Appellants have done so.

APPELLANTS' BRIEF ON APPEAL (CORRECTED)  
U.S. Application No.: 09/767,839  
Atty. Docket: 129250-001021/US



# **TABLE OF CONTENTS**

	<u>Page</u>
APPELLANTS' BRIEF ON APPEAL.....	1
I. REAL PARTY IN INTEREST .....	1
II. RELATED APPEALS AND INTERFERENCES.....	1
III. STATUS OF CLAIMS .....	1
IV. STATUS OF AMENDMENTS .....	1
V. SUMMARY OF CLAIMED SUBJECT MATTER.....	2
(i). Overview of the Subject Matter of the Independent Claims.....	2
(ii). The Remainder of the Specification Also Supports the Claims.....	3
VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL.....	4
VII. ARGUMENTS.....	4
A. The Section 103 Rejections of Claims 4, 5, 7-10, 13-17, 19-23, 38, 41, 42, 45, and 46 .....	4
B. The Section 103 Rejection of Claim 50.....	5
VIII. CLAIMS APPENDIX.....	7
IX. EVIDENCE APPENDIX .....	13
X. RELATED PROCEEDING APPENDIX .....	13



**APPELLANTS' BRIEF ON APPEAL**

**I. REAL PARTY IN INTEREST:**

The real party in interest in this appeal is Lucent Technologies Inc. Assignment of the application was submitted to the U.S. Patent and Trademark Office and recorded at Reel 011520, Frame 0248.

**II. RELATED APPEALS AND INTERFERENCES:**

There are no known appeals or interferences that will affect, be directly affected by, or have a bearing on the Board's decision in this Appeal.

**III. STATUS OF CLAIMS:**

Claims 4, 5, 7-10, 13-17, 19-23, 38, 41, 42, 45, 46 and 50 are pending in the application, with claims 38, 41, 45 and 50 being written in independent form. **Claims 1-3, 6, 11, 12, 18, 24-37, 39, 40, 43, 44 and 47-49 have been cancelled.**

Claims 1-17 and 19-48 were rejected under 35 U.S.C. §103(a) based on Anvekar et al., U.S. Patent Publication No. 2002-0068610 ("Anvekar") and Wang et al, U.S. Patent No. 5,757,929 ("Wang"). Claims 18, 49 and 50 were rejected under 35 U.S.C. §103(a) based on Anvekar in combination with Wang and Lowe et al, U.S. Patent No. 6,298,218 ("Lowe"). Claims 4, 5, 7-10, 13-17, 19-23, 38, 41, 42, 45, 46 and 50 are being appealed.

**IV. STATUS OF AMENDMENTS:**

An Amendment After Final (AAF) was filed on November 22, 2006. In an Advisory Action dated December 18, 2006, the Examiner stated that the AAF was considered but did not place the application in condition for allowance.

**V. SUMMARY OF CLAIMED SUBJECT MATTER:**

**(i). Overview of the Subject Matter of the Independent Claims**

The present invention allows the user of an audio device (or devices) to quickly and easily switch between multiple audio signals (e.g., telephone, radio, MP3-like signals, etc..) upon reception of designated triggering events. More specifically, independent claim 38 reads as follows (specification citations follow in parenthesis):

**38. A method of switching among wireless audio sources, comprising:**

**receiving a plurality of Bluetooth™ compliant transmissions, each including a respective input audio signal, from respective electronic devices; and**

**selecting at least one of said received audio signals for output to a headset in accordance with at least one stored selection instruction overlaid on another audio signal, said selection instruction specifying a designated triggering event for triggering said selection,**

**wherein said designated triggering event is receipt of an advertising message from a merchant.**

(see specification, page 4, lines 7-24; page 5, line 21 to page 6, line 29; page 7, lines 14-24; page 8, line 15 to page 9, line 4, for example).

**41. A method of switching among wireless audio sources, comprising:**

**receiving a plurality of Bluetooth™ compliant transmissions, each including a respective input audio signal from the same network, from respective electronic devices; and**

**selecting at least one of said received audio signals, for output to a headset, overlaid on another audio signal in accordance with at least one stored selection instruction, said selection instruction specifying a designated triggering event for triggering said selection.**

(see specification, page 4, lines 7-27; page 5, line 21 to page 6, line 29; page 7, lines 14-24; page 8, line 15 to page 9, line 4, for example).

**45. A programmable audio output device, comprising:**

**a wireless receiver which receives a plurality of audio signals from the same network transmitted from respective wireless audio sources;**

**a storage device that stores at least one selection instruction which specifies a designated triggering event for triggering said selection;**

**a programmable switch coupled to said storage device and said wireless receiver that selects one of said plurality of audio signals for output according to said at least one stored selection instruction and said designated triggering event; and**

**a headset for supporting said wireless receiver, said storage device, said programmable switch and at least one headset speaker, said at least one headset speaker being coupled to said programmable switch to aurally reproduce said one of said plurality of audio signals, selected for output, overlaid on another audio signal.**

(see specification, page 4, lines 7-24; page 5, line 21 to page 6, line 29; page 7, lines 14-24; page 8, line 15 to page 9, line 4, for example).

**50. A method of switching among wireless audio sources, comprising:**

**receiving a plurality of Bluetooth™ compliant transmissions, each including a respective input audio signal, from respective electronic devices; and**

**selecting at least one of said received audio signals, for output to a headset in accordance with at least one stored selection instruction, overlaid on another audio signal, said selection instruction specifying a designated triggering event for triggering said selection,**

**wherein said designated triggering event is selected from the group consisting of receipt of an incoming information update and receipt of an advertising message from a merchant.**

(see specification, page 4, lines 7-24; page 5, line 21 to page 6, line 29; page 7, lines 14-24; page 8, line 15 to page 9, line 4, for example).

**(ii). The Remainder of the Specification Also Supports the Claims**

The Appellants note that there may be additional disclosure in the Specification that also supports the independent and dependent claims. Further, by referring to the disclosure above the Appellants do not represent

that this is the only evidence that supports the independent claims nor do Appellants necessarily represent that this disclosure can be used to fully interpret the claims of the present invention. Instead, this disclosure is an overview of the claimed subject matter.

**VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL:**

Appellants seek the Board's review and reversal of the rejection of claims 4, 5, 7-10, 13-17, 19-23, 38, 41, 42, 45, and 46 under 35 U.S.C. §103(a) based on Anvekar and Wang and claim 50 under 35 U.S.C. §103(a) based on Anvekar in combination with Wang and Lowe.

**VII. ARGUMENTS:**

**A. The §103 Rejections of Claims 4, 5, 7-10, 13-17, 19-23, 38, 41, 42, 45, and 46**

Claims 1-17 and 19-48 were rejected under 35 U.S.C. §103(a) based on Anvekar and Wang. Of these, claims 4, 5, 7-10, 13-17, 19-23, 38, 41, 42, 45, and 46 are still pending. Appellants respectfully disagree with these rejections for at least the following reasons.

Neither Anvekar nor Wang, taken separately or in combination, disclose or suggest the selection of an audio signal that has been overlaid on another audio signal and the output of such a signal to a headset as in claims 4, 5, 7-10, 13-17, 19-23, 38, 41, 42, 45, and 46.

For example, the Examiner admits that Anvekar does not disclose the output of one audio signal overlaid on another. To make up for this deficiency the Examiner relies on Wang.

Though Wang appears to disclose the overlay of one audio signal on another, such an overlaid audio signal is not output to a headset. Instead, it is

output from a garment that is worn by a user. In fact, Wang explicitly states that a headset is not used at all.

In the Advisory Action the Examiner states that Wang discloses a hands-free device that is placed in a garment so a user's ear is not blocked. Further, the Examiner relies on Wang for the teaching of a wireless device that receives a plurality of audio sources and reproduces at least two of the sources. Setting aside for the purposes of Appellants initial appeal brief whether these statements are accurate, the Appellants note that the Examiner fails to address the position raised by Appellants, namely, that Wang fails to disclose or suggest the selection of an audio signal that has been overlaid on another audio signal and the output of such a signal to a headset.

Accordingly, Appellants submit that the subject matter of claims 4, 5, 7-10, 13-17, 19-23, 38, 41, 42, 45 and 46 would not have been obvious to one of ordinary skill in the art upon reading the disclosure of Anvekar taken separately, or in combination, with Wang.

Appellants respectfully request that the members of the Board reverse the Examiner's decisions and allow claims 4, 5, 7-10, 13-17, 19-23, 38, 41, 42, 45 and 46.

**B. The §103 Rejection of Claim 50**

Claims 18, 49 and 50 were rejected under 35 U.S.C. §103(a) based on Anvekar in combination with Wang and Lowe. Of the three claims, claim 50 is the lone remaining claim still pending. Appellants respectfully disagree with this rejection for at least the following reason.

Appellants note that claim 50 contains the feature of the selection of an audio signal that has been overlaid on another audio signal and the output of such a signal to a headset discussed above. Appellants respectfully submit that the subject matter of claim 50 would not have been obvious to one of ordinary skill in the art upon reading the disclosures of Anvekar taken

APPELLANTS' BRIEF ON APPEAL (CORRECTED)

U.S. Application No.: 09/767,839

Atty. Docket: 129250-001021/US

separately or in combination with Wang and Lowe for the reasons stated earlier above and because Lowe does not make up for the deficiencies of Anvekar and Wang.

Accordingly, Appellants respectfully request that the members of the Board reverse the decision of the Examiner, withdraw this rejection and allow claim 50.

**Conclusion:**

Appellants respectfully request that the members of the Board reverse the decision of the Examiner and allow claims 4, 5, 7-10, 13-17, 19-23, 38, 41, 42, 45, 46 and 50.

The Commissioner is authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 50-3777 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

Capitol Patent & Trademark Law Firm, PLLC

By: \_\_\_\_\_

John E. Curtin, Reg. No. 37,602

P.O. Box 1995

Vienna, VA 22183

(703)266-3330

**VIII. CLAIMS APPENDIX**

1. (Cancelled).
2. (Cancelled).
3. (Cancelled).
4. A method as in claim 50 , wherein said group further includes receipt of a message from a wireless audio source.
5. A method as in claim 50, wherein said group further includes a particular date and time.
6. (Cancelled).
7. A method as in claim 50, wherein said group further includes receipt of an electronic message at a wireless audio source.
8. A method as in claim 50, wherein said group further includes a request to communicate via a mobile telephone.
9. A method as in claim 45, wherein said wireless audio sources are in RF communication with said wireless receiver.
10. A method as in claim 9, wherein said wireless receiver and said wireless audio sources are Bluetooth™ compliant.

11. (Cancelled).

12. (Cancelled).

13. A method as in claim 50, further comprising selecting at least another of said received audio signals for output to said headset after said triggering event has concluded.

14. A method as in claim 50, wherein said selecting is performed according to a plurality of selection instructions.

15. A method as in claim 14, wherein each of said selection instructions is associated with a respective electronic device so that selection of a particular electronic device occurs in response to a triggering event included in the associated selection instruction.

16. A method as in claim 50, wherein said group further includes a chronological event.

17. A method as in claim 50, wherein said group further includes a mobile telephone transmission.

18. (Cancelled).

19. A method as in claim 50, wherein at least one of said electronic devices is a mobile telephone.

APPELLANTS' BRIEF ON APPEAL (CORRECTED)

U.S. Application No.: 09/767,839

Atty. Docket: 129250-001021/US

20. A method as in claim 50, wherein at least one of said electronic devices is an AM/FM radio.

21. A method as in claim 50, wherein at least one of said electronic devices is a compact disc (CD) player.

22. A method as in claim 50, wherein at least one of said electronic devices is a walkie-talkie radio.

23. A method as in claim 50, wherein at least one of said electronic devices is a personal computer.

24. (Cancelled).

25. (Cancelled).

26. (Cancelled).

27. (Cancelled).

28. (Cancelled).

29. (Cancelled).

30. (Cancelled).

31. (Cancelled).

32. (Cancelled).

APPELLANTS' BRIEF ON APPEAL (CORRECTED)

U.S. Application No.: 09/767,839

Atty. Docket: 129250-001021/US

33. (Cancelled).

34. (Cancelled).

35. (Cancelled).

36. (Cancelled).

37. (Cancelled).

38. A method of switching among wireless audio sources, comprising:  
receiving a plurality of Bluetooth™ compliant transmissions, each  
including a respective input audio signal, from respective electronic devices;  
and

selecting at least one of said received audio signals for output to a  
headset in accordance with at least one stored selection instruction overlaid on  
another audio signal, said selection instruction specifying a designated  
triggering event for triggering said selection,

wherein said designated triggering event is receipt of an advertising  
message from a merchant.

39. (Cancelled).

40. (Cancelled).

41. A method of switching among wireless audio sources, comprising:

receiving a plurality of Bluetooth™ compliant transmissions, each including a respective input audio signal from the same network, from respective electronic devices; and

selecting at least one of said received audio signals, for output to a headset, overlaid on another audio signal in accordance with at least one stored selection instruction, said selection instruction specifying a designated triggering event for triggering said selection.

42. The method as in claim 41 wherein the network comprises a piconet.

43. (Cancelled).

44. (Cancelled).

45. A programmable audio output device, comprising:

a wireless receiver which receives a plurality of audio signals from the same network transmitted from respective wireless audio sources;

a storage device that stores at least one selection instruction which specifies a designated triggering event for triggering said selection;

a programmable switch coupled to said storage device and said wireless receiver that selects one of said plurality of audio signals for output according to said at least one stored selection instruction and said designated triggering event; and

a headset for supporting said wireless receiver, said storage device, said programmable switch and at least one headset speaker, said at least one headset speaker being coupled to said programmable switch to aurally reproduce said one of said plurality of audio signals, selected for output, overlaid on another audio signal.

46. The device as in claim 45 wherein the network comprises a piconet.

47. (Cancelled).

48. (Cancelled).

49. (Cancelled).

50. A method of switching among wireless audio sources, comprising:

receiving a plurality of Bluetooth™ compliant transmissions, each including a respective input audio signal, from respective electronic devices; and

selecting at least one of said received audio signals, for output to a headset in accordance with at least one stored selection instruction, overlaid on another audio signal, said selection instruction specifying a designated triggering event for triggering said selection,

wherein said designated triggering event is selected from the group consisting of receipt of an incoming information update and receipt of an advertising message from a merchant.

**IX. EVIDENCE APPENDIX**

None.

**X. RELATED PROCEEDINGS APPENDIX**

None.